

STATEMENT OF EMERGENCY

907 KAR 3:170E

(1) This emergency administrative regulation is being promulgated to implement a school-based telehealth program in fourteen (14) designated public school sites across the state. The school-based telehealth program is necessary to enhance member access to needed services while reducing Medicaid, Medicaid member, and Medicaid provider transportation costs. This action must be taken on an emergency basis to meet a critical need for health care in rural areas.

(2) Failure to enact this administrative regulation on an emergency basis could pose an imminent threat to the public health, safety or welfare of Medicaid members whose receipt of services may be jeopardized due to a lack of provider accessibility.

(3) This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

Ernie Fletcher
Governor

Mark D. Birdwhistell, Secretary
Cabinet for Health and Family Services

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Long Term Care and Community Alternatives

4 (Emergency Amendment)

5 907 KAR 3:170E. Telehealth services and reimbursement.

6 RELATES TO: KRS 11.550, 194A.060, 205.559, 205.560, 422.317, 434.840-434
7 860, 42 C.F.R. 415.152, 415.174, 415.184, 431.300-431.307, 440.50

8 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3),
9 205.559(7), 205.560[, ~~EO 2004-726~~]

10 NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9,~~
11 ~~2004, reorganized the Cabinet for Health Services and placed the Department for~~
12 ~~Medicaid Services and the Medicaid Program under the Cabinet for Health and Family~~
13 ~~Services.]~~ The Cabinet for Health and Family Services, Department for Medicaid
14 Services, has responsibility to administer the Medicaid Program. KRS 205.520(3)
15 authorizes the cabinet, by administrative regulation, to comply with any requirement that
16 may be imposed or opportunity presented by federal law for the provision of medical
17 assistance to Kentucky's indigent citizenry. KRS 205.559 establishes the requirements
18 regarding Medicaid reimbursement of telehealth providers and KRS 205.559(2) and (7)
19 require the cabinet to promulgate an administrative regulation relating to telehealth
20 services and reimbursement. This administrative regulation establishes the coverage
21 provisions relating to telehealth services and the method of determining reimbursement

for services by the Department for Medicaid Services in accordance with KRS 205.559.

Section 1. Definitions.

(1) "Community mental health center" or "CMHC" means a facility that provides a comprehensive range of mental health services to Medicaid members of a designated area in accordance with KRS 210.370 to 210.485.

(2) "Consultation" means a type of evaluation and management service as defined by the most recent edition of the Current Procedural Terminology published annually by the American Medical Association.

(3) ~~[(2)]~~ "CPT code" means a code used for reporting procedures and services performed by physicians or other licensed medical professionals which is published annually by the American Medical Association in Current Procedural Terminology.

(4) ~~[(3)]~~ "Department" means the Department for Medicaid Services or its designated agent.

(5) ~~[(4)]~~ "GT modifier" means a modifier that identifies a telehealth service which is approved by the healthcare common procedure coding system (HCPCS).

(6) ~~[(5)]~~ "Health care provider" means a:

(a) Licensed physician;

(b) Licensed advanced registered nurse practitioner;

(c) Certified physician assistant working under physician supervision;

(d) Licensed dentist or oral surgeon; or

(e) ~~Licensed~~ Community mental health center.

(7) ~~[(6)]~~ "Hub site" means a telehealth site where the medical specialist providing the telehealth service is located and is considered the place of service.

1 (8) [(7)] "KenPAC" means the Kentucky Patient Access and Care system.

2 (9) [(8)] "KenPAC PCCM" means a Medicaid provider who is enrolled as a primary
3 care case manager in the Kentucky Patient Access and Care System.

4 (10) [(9)] "Legally-authorized representative" means a Medicaid member's
5 [recipient's] parent or guardian if a member [recipient] is a minor child, or a person with
6 power of attorney for a member [recipient].

7 ~~[(10)] "Licensed community mental health center" or "licensed CMHC" means a facility~~
8 ~~that provides a comprehensive range of mental health services to recipients of a~~
9 ~~designated area in accordance with KRS 210.370 to 210.480.]~~

10 (11) "Medical necessity" or "medically necessary" means a covered benefit is
11 determined to be needed in accordance with 907 KAR 3:130.

12 (12) "Medical specialist" means a physician specialist, an oral surgeon, or a CMHC
13 as specified in Section 4(1) of this administrative regulation.

14 (13) "Member" means a recipient as defined by KRS 205.8451(9).

15 (14) "Spoke site" means a telehealth site where the member [recipient] receiving the
16 telehealth service is located.

17 (15) [(14)] "Telehealth service" means a medical service provided through advanced
18 telecommunications technology from a hub site to a member [recipient] at a spoke site.

19 (16) [(15)] "Telehealth site" means a hub site or spoke site that has been approved
20 as part of a telehealth network established in accordance with KRS 11.550.

21 (17) "Telepresenter" means a person with the patient during the time of the
22 encounter, who aids in the examination by following the orders of the consulting
23 clinician, including the manipulation of cameras and appropriate placement of other

1 peripheral devices used to conduct the patient examination.

2 (18) [(16)] "Transmission cost" means the cost of the telephone line and related costs
3 incurred during the time of the transmission of a telehealth service.

4 (19) [(17)] "Two (2) way interactive video" means a type of advanced
5 telecommunications technology that permits a real time service to take place between a
6 member [recipient] and a telepresenter at the spoke site and a medical specialist at the
7 hub site.

8 Section 2. Covered Services.

9 (1) Except as restricted in accordance with Section 3 of this administrative regulation,
10 a telehealth service shall be covered if medically necessary.

11 (2) A telehealth service shall require:

12 (a) The use of two (2) way interactive video;

13 (b) A referral by a health care provider specified in Section 4(2) of this administrative
14 regulation;

15 (c) A referral by a member's [recipient's] KenPAC PCCM if the comparable
16 nontelehealth service requires a KenPAC PCCM referral; and

17 (d) A referral by a member's [recipient's] lock-in provider if the member is locked in
18 [recipient is locked in] pursuant to 42 C.F.R. 431.54 and 907 KAR 1:677.

19 Section 3. Limitations.

20 (1) Coverage of telehealth services for a provider that is not a community mental
21 health center [non-CMHC] shall be limited to a maximum of four (4) telehealth services
22 per member [recipient] per year if provided as follows:

23 (a) For a member [recipient] age twenty-one (21) years and older, the evaluation and

management consultation CPT codes 99241 through 99275 may be billed as a telehealth service if provided by a medical specialist specified in Section 4(1) of this administrative regulation; or

(b) For a member ~~[recipient]~~ under the age of twenty-one (21) years:

1. The evaluation and management consultation CPT codes 99241 through 99275 may be billed as a telehealth service if provided by a medical specialist specified in Section 4(1) of this administrative regulation; and

2. Psychiatric diagnostic evaluation CPT code 90801 and individual psychotherapy CPT codes 90804 through 90809 may be billed as a telehealth service if provided by a psychiatrist.

(2) Coverage for a telehealth service for a ~~[licensed]~~ CMHC shall be limited to twelve (12) psychiatric services per member ~~[recipient]~~ per year and shall be billed using the following CPT codes for the following corresponding services ~~[diagnostic CPT service codes]~~:

(a) 90801 for a diagnostic interview examination;

(b) 90862 for medication management;

(c) 90887 for an outpatient collateral;

(d) 90804 for an individual psychotherapy; or

(e) 90847 for an outpatient family therapy.

(3) Coverage shall not be provided for a service that requires face-to-face contact with a member ~~[recipient]~~ in accordance with 42 C.F.R. 447.371.

Section 4. Eligible Providers.

(1) A medical specialist at a hub site shall be enrolled as a Medicaid provider

pursuant to 907 KAR 1:671 and 907 KAR 1:672 and shall be:

(a) For a provider that is not a community mental health center, ~~[non-CMHC]~~ a licensed physician in one (1) of the following specialties or subspecialties:

1. Dermatology;
2. Emergency medicine;
3. An internal medicine subspecialty;
4. General surgery or a surgery subspecialty;
5. Neurology;
6. Obstetrics and gynecology;
7. A pediatric subspecialty;
8. Psychiatry;
9. Radiology or radiation medicine; or
10. A licensed oral surgeon; or

(b) For a ~~[licensed]~~ CMHC:

1. A psychiatrist; or
2. An advanced registered nurse practitioner.

(2) A health care provider requesting a telehealth service shall be an enrolled Medicaid provider who is a:

- (a) Licensed physician;
- (b) Licensed advanced registered nurse practitioner;
- (c) Certified physician assistant working under physician supervision;
- (d) Licensed dentist or oral surgeon; or
- (e) ~~[A-Licensed]~~ CMHC.

1 Section 5. Reimbursement.

2 (1) The department shall reimburse a medical specialist located at a hub site for a
3 telehealth service:

4 (a) An amount equal to the amount paid for a comparable in-person service in
5 accordance with 907 KAR 3:010; or

6 (b) If a ~~licensed~~ CMHC, in accordance with 907 KAR 1:045.

7 (2) A medical specialist shall bill for a service using the appropriate evaluation and
8 management CPT code as specified in Section 3 of this administrative regulation with
9 the addition of the two (2) letter "GT" modifier.

10 (3) The department shall not require the presence of a health care provider
11 requesting a telehealth service at the time of the telehealth service unless it is
12 requested by a medical specialist at the hub site.

13 (4) Reimbursement shall not be made for transmission costs.

14 Section 6. Confidentiality and Data Integrity.

15 (1) A telehealth service shall be performed on a secure telecommunications line or
16 utilize a method of encryption adequate to protect the confidentiality and integrity of the
17 telehealth service information.

18 (2) Both a hub site and a spoke site shall use authentication and identification to
19 ensure the confidentiality of a telehealth service.

20 (3) A provider of a telehealth service shall implement confidentiality protocols that
21 include:

22 (a) Identifying personnel who have access to a telehealth transmission;

23 (b) Usage of unique passwords or identifiers for each employee or person with

1 access to a telehealth transmission; and

2 (c) Preventing unauthorized access to a telehealth transmission.

3 (4) A provider's protocols and guidelines shall be available for inspection by the
4 department upon request.

5 Section 7. Informed Consent.

6 (1) Before providing a telehealth service to a member [~~recipient~~], a health care
7 provider shall document written informed consent from the member [~~recipient~~] and shall
8 ensure that the following written information is provided to the member [~~recipient~~] in a
9 format and manner that the member [~~recipient~~] is able to understand:

10 (a) The member [~~recipient~~] shall have the option to refuse the telehealth service at
11 any time without affecting the right to future care or treatment and without risking the
12 loss or withdrawal of a Medicaid benefit to which the member [~~recipient~~] is entitled;

13 (b) The member [~~recipient~~] shall be informed of alternatives to the telehealth service
14 that are available to the member [~~recipient~~];

15 (c) The member [~~recipient~~] shall have access to medical information resulting from
16 the telehealth service as provided by law;

17 (d) The dissemination, storage, or retention of an identifiable member [~~recipient~~]
18 image or other information from the telehealth service shall not occur without the written
19 informed consent of the member [~~recipient~~] or the member's [~~recipient's~~] legally-
20 authorized representative;

21 (e) The member [~~recipient~~] shall have the right to be informed of the parties who will
22 be present at the spoke site and the hub site during the telehealth service and shall
23 have the right to exclude anyone from either site; and

(f) The member ~~[recipient]~~ shall have the right to object to the video taping of a telehealth service.

(2) A copy of the signed informed consent shall be retained in the member's ~~[recipient's]~~ medical record and provided to the member ~~[recipient]~~ or the member's ~~[recipient's]~~ legally-authorized representative upon request.

(3) The requirement to obtain informed consent before providing a service shall not apply to an emergency situation if the member ~~[recipient]~~ is unable to provide informed consent and the member's ~~[recipient's]~~ legally-authorized representative is unavailable.

Section 8. Medical Records.

(1) A request for a telehealth service from a physician or other health care provider specified in Section 4(2) of this administrative regulation and the medical necessity for the telehealth service shall be documented in the member's ~~[recipient's]~~ medical record.

(2) A health care provider shall keep a complete medical record of a telehealth service provided to a member ~~[recipient]~~ and follow applicable state and federal statutes and regulations for medical recordkeeping and confidentiality in accordance with KRS 194A.060, 422.317, 434.840 - 434.860, and 42 C.F.R. ~~[431]~~ 431.300 to 431.307.

(3) A medical record of a telehealth service shall be maintained in compliance with 907 KAR 1:672.

(4) Documentation of a telehealth service by the referring health care provider shall be included in the member's ~~[recipient's]~~ medical record and shall include:

(a) The diagnosis and treatment plan resulting from the telehealth service and a progress note by the referring health care provider if present at the spoke site during the telehealth service;

- 1 (b) The location of the hub site and spoke site;
- 2 (c) A copy of the signed informed consent form; and
- 3 (d) Documentation supporting the medical necessity of the telehealth service.
- 4 (5) A medical specialist's diagnosis and recommendations resulting from a telehealth
- 5 service shall be documented in the member's [~~recipient's~~] medical record at the
- 6 member's [~~recipient's~~] location. The medical specialist shall send a written report to the
- 7 referring health care provider.

8 Section 9. School-based Telehealth.

9 (1) The provisions of this section shall apply only upon approval of a school-based

10 telehealth program by the Telehealth Board established in KRS 11.550.

11 (2) Effective through October 31, 2007, the department shall cover a primary care

12 telehealth service delivered by a hub site identified in subsection (3) of this section to a

13 public school spoke site identified in subsection (4) of this section.

14 (3) The following facilities shall be designated as a hub site for the purposes of this

15 section:

16 (a) St. Claire Regional Medical Center and its community primary care clinics;

17 (b) Glasgow Family Practice Residency Program; and

18 (c) Lewis County Primary Care Center.

19 (4) The following public schools shall be designated as a spoke site for the purposes

20 of this section:

21 (a) Bath County Middle School;

22 (b) Botts Elementary School;

23 (c) Olive Hill Elementary School;

1 (d) Rowan County High School;

2 (e) Rowan County Middle School;

3 (f) Clearfield Elementary School;

4 (g) McBrayer Elementary School;

5 (h) Rodburn Elementary School;

6 (i) Tilden Hogge Elementary School;

7 (j) North Metcalf County Elementary School;

8 (k) Lewis County Middle School;

9 (l) Garrison Elementary School;

10 (m) Laurel Elementary School; and

11 (n) Tollesboro Elementary School.

12 (5) Coverage of a primary care telehealth service delivered by a hub site identified in
13 subsection (3) of this section to a public school spoke site identified in subsection (4) of
14 this section shall be billed using the following CPT codes for the following corresponding
15 services:

16 (a) 99201 through 99205 for new patient office visits;

17 (b) 99211 through 99215 for established patient office visits; or

18 (c) 99241 through 99245 for consultation office visits.

19 (6) The department shall reimburse a primary care telehealth service provided to a
20 public school spoke site at the same rate as a face-to-face consultation.

21 (7) Total aggregate reimbursement under the telehealth school-based program shall
22 not exceed \$100,000 per calendar year.

23 (8) The department shall not cover a consultation provided by a site not within the

1 telehealth network pursuant to KRS 304.17A-138(1)(a).

2 (9) The Telehealth Board shall report by October 31, 2008 to the Interim Joint
3 Committee on Health and Welfare on the areas specified by KRS 11.550(5).

4 Section 10. Appeal Rights.

5 (1) An appeal of a department determination regarding a Medicaid beneficiary shall
6 be in accordance with 907 KAR 1:563.

7 (2) An appeal of a department determination regarding Medicaid eligibility of an
8 individual shall be in accordance with 907 KAR 1:560.

9 (3) A provider may appeal a department decision as to the application of this
10 administrative regulation in accordance with 907 KAR 1:671.

907 KAR 3:170E

REVIEWED:

Date

Shannon Turner, J.D., Commissioner
Department for Medicaid Services

Date

Mike Burnside, Deputy Secretary
Cabinet for Health and Family Services

APPROVED:

Date

Mark D. Birdwhistell, Secretary
Cabinet for Health and Family Services

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 3:170E

Cabinet for Health and Family Services

Department for Medicaid Services

Agency Contact Person: Stuart Owen or Stephanie Brammer-Barnes (564-6204)

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the coverage provisions relating to telehealth services and the method of determining Medicaid reimbursement for a telehealth consultation that is provided within the telehealth network by a Medicaid-participating practitioner.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish coverage provisions relating to telehealth services and the method of determining Medicaid reimbursement for a telehealth consultation that is provided within the telehealth network by a Medicaid-participating practitioner.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 205.559 by establishing coverage provisions relating to telehealth services and the method of determining Medicaid reimbursement for a telehealth consultation that is provided within the telehealth network by a Medicaid-participating practitioner.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists and will continue to assist in the effective administration of the authorizing statutes by establishing coverage provisions relating to telehealth services and the method of determining Medicaid reimbursement for a telehealth consultation that is provided within the telehealth network by a Medicaid-participating practitioner.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation implements a school-based telehealth program in fourteen (14) designated public school sites across the state. Via this administrative regulation and upon approval by the Telehealth Board, the Department for Medicaid Services will reimburse primary care physicians for providing telehealth consultations to the designated public school sites so that diagnosis and treatment may begin almost immediately. The school-based telehealth program is expected to help enhance Medicaid member access to needed services and lower the cost of healthcare by reducing Medicaid transportation costs and providing a channel for educational meetings that can decrease unproductive and costly travel.
 - (b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to implement a

- school-based telehealth program intended to enhance Medicaid member access to needed services.
- (c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by enhancing Medicaid member access to needed services.
- (d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the authorizing statutes by enhancing Medicaid member access to needed services.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will impact Medicaid members needing primary care services in the counties served by the fourteen (14) public school spoke sites and enrolled in-state Medicaid physician specialists providing consults via the three (3) designated hub sites.
- (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Medicaid members in the counties served by the fourteen (14) public school spoke sites will now have access to primary care services without having to travel to urban access areas.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: Aggregate expenditures to implement the amendment will be capped at \$100,000 for each year.
- (b) On a continuing basis: Aggregate expenditures to implement the amendment will be capped at \$100,000 for each year.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX, and matching funds of general fund appropriations and collections will be used to fund the implementation and enforcement of this administrative regulation.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement this administrative regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used)
The amendment to this administrative regulation establishes a school-based

telehealth program in fourteen (14) designated public school sites across the state, thereby enhancing Medicaid member access to primary care services. The program is being launched on a pilot basis; therefore, it will not be implemented statewide.